



County of Fairfax, Virginia

AMENDMENT

Date: **APR 30 2018**

AMENDMENT NO. 2

CONTRACT TITLE: Alcohol & Drug Testing Services

CONTRACTOR

First Hospital Laboratories, Inc.
dba FirstSource Solutions
100 Highpoint Drive, Suite 102
Chalfont, PA 18914

SUPPLIER CODE

1000013007

CONTRACT NO.

4400007544

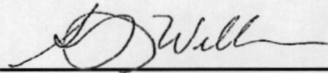
By mutual agreement, Contract 4400007544 is hereby amended as follows:

- **ADD:** The attached Contractor's Background Screening Service Agreement.

All prices, terms and conditions remain the same.

ACCEPTANCE:

BY:


(Signature)

Stacy Williams

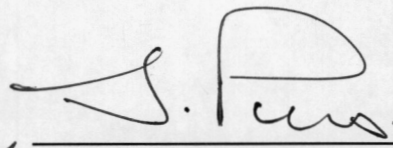
(Printed)

EVP & CFO

(Title)

04/25/2018

(Date)


Cathy A. Muse, CPPO
Director/County Purchasing Agent

Steve Pierson, CPPB
Contracts Manager

DISTRIBUTION:

Dept. of Finance – Accounts Payable
DOF, Risk Management – Wallace Simmons/e
DOF, Risk Management – Leonard Clark/e
DOF, Risk Management – Annette Lowery/e
Human Resources – Sherry Rowe/e
Police Department – Melinda Ewing/e
Police Department – Michael Estelle/e
Contractor – proposal@fssolutions.com & JRodriguez-Kurtz@fssolutions.com

Contract Specialist II – Yong Kim, CPPB
ACS, Team 1 – J. Waysome-Tomlin
FCPS – Virginia Sellers/vesellers@fcps.edu

Department of Procurement & Material Management
12000 Government Center Parkway, Suite 427
Fairfax, VA 22035-0013

Website: www.fairfaxcounty.gov/procurement/

Phone (703) 324-3201, TTY: 711, Fax: (703) 324-3228



FSSolutions

**Background Screening
Service Agreement & Amendment No 2 to Fairfax County
Contract No. 4400007544**

**Presented to:
Fairfax County Government**

**FSSolutions
100 Highpoint Drive, Suite 102
Chalfont, PA 18914**



This Background Screening Service Agreement ("Agreement") is made per the date on Amendment No. 2 (the "Effective Date") by and between First Hospital Laboratories, Inc. d/b/a FSSolutions, hereinafter ("FSSolutions"), a Virginia stock corporation having its principal place of business at 100 Highpoint Drive, Suite 102, Chalfont, PA 18914 and Fairfax County Government hereinafter ("Client") having its principal place of business at 12000 Government Ctr Pkwy Ste 214 Fairfax VA 22035. This Agreement incorporates Fairfax County Contract Number 4400007544, as amended, between FSSolutions and Client awarded on March 13, 2017 ("Master Agreement"). Included within the Master Agreement is Fairfax County RFP No. 2000002053, all Addenda, Contractor's Technical proposal dated October 18, 2016; Contractor's Cost proposal, Attachment #1 (Proposed List of Collection Sites/Clinics), and Attachment #2 (Background Screens – Menu of Services) dated January 4, 2017, Memorandum of Negotiations, and any subsequent amendments to the contract.

Recitals:

Whereas, FSSolutions provides services to implement and administer drug-free workplace programs which may include, but are not limited to, policy and procedure development, drug testing, alcohol testing, Medical Review Officer ("MRO") services, education, recordkeeping, background investigations/screening and Client support (collectively the "Services"); and

Whereas, Client has or desires to have FSSolutions provide some or all of the Services for screening Client job applicants and/or employees; and

Whereas, FSSolutions is willing to provide the Services to Client pursuant to the terms set forth in this Agreement.

Now therefore, in consideration of the mutual covenants and promises set forth herein, the parties enter into this Agreement as of the Effective Date set forth above.

Article I. Services Provided by FSSolutions

- 1.1 FSSolutions agrees to provide the following Services to Client upon request and relying upon Client's representations that it has a legitimate purpose for such Services. FSSolutions will only furnish a report for a permissible purpose under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* ("FCRA") and no other purpose:

Background Screening Services and Pricing

Service	Price		Unit
MVR Report	\$4.00	4	Per license

- 1 Jurisdictional Access may apply. (County, State, Federal)
2 On-site inspection required for access.
3 State Department of Motor Vehicle Fees will apply. Fees vary by state.
4 Third Party Access Fees may apply.

**Article II. General Terms and Conditions****2.1 Client's Certification of Legal Compliance**

Client certifies to FSSolutions that the information it receives through the background screening process (hereinafter referred to as "information products") will not be knowingly used in violation of any applicable federal, state or local laws, including but not limited to, equal employment opportunity laws or regulations. The laws relating to the furnishing and use of information are subject to change. It is the responsibility of Client to become knowledgeable in such laws and to comply with them. The failure to comply with the then current applicable law may result in a breach of this agreement. FSSolutions does not undertake any obligation to advise Client of its legal obligations. FSSolutions does not act as legal counsel for Client. Client is responsible for retaining counsel to advise it regarding proper use of consumer reports; compliance with the FCRA, the Driver Privacy Protection Act, 18 U.S.C. § 2721 *et seq.* ("DPPA") and other applicable federal, state and local laws; and development of an appropriate screening program for Client's use of consumer reports. Client agrees to promptly execute and return to FSSolutions all documentation required, now or in the future, by any government agency or necessary for FSSolutions to lawfully permit release of information or to ensure compliance with applicable laws or regulations. Such documentation shall become part of this Agreement. The failure to return such documentation will result in Client being blocked from receiving the information related to the documentation. Notwithstanding the foregoing any record audit by FSSolutions is subject to applicable law and must be made in accordance with Client's security policies.

2.1.1 When Information Products are Used for Employment Purposes

If the information products are to be used for an employment purpose, Client certifies that prior to obtaining or causing a "consumer report" and/or "investigative consumer report" to be obtained for employment purposes, a clear and conspicuous disclosure, in a document consisting solely of the disclosure, will be made in writing to the consumer explaining that a consumer report and/or investigative consumer report may be obtained for employment purposes, and will be presented to the consumer before the report is procured or caused to be procured. This disclosure will satisfy all requirements identified in Section 606(a)(1) of the Fair Credit Reporting Act as well as any applicable state or local laws. The consumer will have authorized, in writing, the obtaining of the report by Client. If the consumer is denied employment, or other adverse employment action is taken, in whole or in part, on the basis of the consumer report, Client will provide to the consumer: (1) a copy of the consumer report; and (2) a description, in writing, of the rights of the consumer entitled: "A Summary of Your Rights Under the Fair Credit Reporting Act"; and provide the name, address and telephone number of FSSolutions. Client hereby acknowledges that it has received a copy of the Summary of Rights (16 C.F.R. Part 601, Appendix A) and a Notice of User Responsibility (16 C.F.R. Part 601, Appendix C). These notices also are available at FSSolutions' website (www.FSSolutions.com) the Federal Trade Commission's website (www.ftc.gov), and upon request by calling 1-800-732-3784.

2.1.2 Investigative Consumer Reports

If the consumer makes a written request within a reasonable amount of time, Client will provide: (1) information about whether an investigative consumer report has been requested; (2) if an investigative consumer report has been requested, written disclosure of the nature and scope of the investigation requested; and (3) the name and address of the outside agency to whom requests for any of these reports has been made. This information will be provided no later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the latter.

2.1.3. Motor Vehicle Reports (MVRs)

Client hereby certifies that Motor Vehicle Reports (MVRs) shall only be ordered in strict compliance with the Driver Privacy Protection Act ("DPPA", at 18 U.S.C. § 2721 *et seq.*) and any related state laws. Client further certifies that no MVR shall be ordered without first obtaining the written consent of the consumer, evidence of which shall be transmitted to FSSolutions in the form of the consumer's signed release authorization form. Client shall not transmit any data contained in the resulting MVR via the public internet, electronic mail, or other unsecured means.

**2.2 Misuse of Information**

The FCRA prohibits the obtaining of information from a consumer reporting agency for an impermissible purpose. Accordingly, Client agrees not to resell, sub-license, deliver, display or otherwise distribute to any third party any of the information products addressed herein, except as required by law. Further, those involved in such improper requesting of information may be subject to criminal penalties of imprisonment up to two years and/or a fine of \$5,000 for each offense. 15 U.S.C. § 1681q. However such punishments are subject to change as the FCRA is amended. Further, the DPPA prohibits obtaining information under false pretenses and restricts the resale or redisclosure of personal information contained in state motor vehicle records. A violation of the DPPA may also result in criminal penalties. 18 U.S.C. § 2733(a). If a Client intentionally misrepresents to FSSolutions the reason for a report or requests a report for an impermissible purpose, FSSolutions may seek other remedies available to FSSolutions.

2.3 Confidentiality

Subject to the terms of RFP 2000002053, Special Provisions, paragraph 12, Trade Secrets/Proprietary Information and RFP 2000002053, General Conditions and Instructions to Bidders, paragraph 6, each party will retain in strict confidence and will not use, disclose, disseminate or commercialize a disclosing party's (the "Discloser's") Confidential Information. The Discloser's Confidential Information may only be used by the receiving party ("Recipient") in the course of performing its rights and obligations under this Agreement; provided however that FSSolutions will have the right to compile and distribute statistical analyses and reports utilizing aggregated data derived from information and data obtained from Client, other FSSolutions clients and other sources. "Confidential Information" shall mean all the party's prospect list, client information, client records, employee list, financial data, business plans, business strategies, proprietary software and any other information of a party disclosed by one party to the other. Confidential Information does not include: (i) information already known or independently developed by the Recipient outside the scope of this relationship by personnel not having access to any Confidential Information; (ii) information already in the public domain through no wrongful act of the Recipient; (iii) information received by the Recipient from a third party who was free to disclose such information; (iv) information subject to disclosure pursuant to the Virginia Freedom of Information Act; or (v) information provided by FSSolutions that has not been properly protected in accordance with Article 2, Section 4(D)(3) of the Fairfax County Purchasing Resolution.

2.4 Ownership

Subject to RFP 2000002053, Special Provisions, paragraph 28, Safeguards of Information, and with the exception of client information (e.g. Client's demographic information such as applicant data), all information, reports, studies, object or source code, flow charts, diagrams, and other tangible or intangible material of any nature whatsoever, produced by FSSolutions, shall be the sole and exclusive property of FSSolutions. Client shall be entitled to use all such work product in accordance with the terms and conditions of this Agreement.

2.5 Reverse Engineering

Client may not attempt to decompile, disassemble or reverse engineer any FSSolutions systems or tools.

2.6 Payment Terms

FSSolutions will provide Client with monthly invoices per RFP 2000002053, Special Provisions, paragraph 21, Reports and Invoicing for all services and deliverables provided under this Agreement. Payment shall be made per RFP 2000002053, General Conditions and Instructions to Bidders, paragraph 58, 59 and 60.

2.7 Independent Contractors

Both parties to this Agreement are independent contractors, and nothing contained herein shall be construed to place the parties in the relationship of partners, joint ventures, principal-agent or employer-employee. Neither party shall have the power to obligate or bind the other whatsoever beyond the terms of this Agreement and/or the Master Agreement. As an independent contractor, Client agrees to comply with and shall be responsible for all requirements of federal, state, and local laws and regulations relating to the Services.

2.8 Term and Termination

Term: Per RFP 2000002053, Special Provisions, paragraph 3, Contract Period and Renewal.

Termination: Per RFP 2000002053, General Conditions and Instructions to Bidders, paragraph 31, 32, and 33.



2.9 Pricing and Significant Changes

2.9.1 Per RFP 2000002053, Special Provisions, paragraph 11, Pricing.

2.10 Indemnification and Limitation of Liability

Client understands that FSSolutions obtains the information reported in its information products from various third party sources "AS IS", and therefore is providing the information to Client "AS IS". FSSolutions makes no representation or warranty whatsoever, express or implied, including, but not limited to, implied warranties of merchantability or fitness for particular purpose, and implied warranties arising from the course of dealing or a course of performance with respect to the accuracy, validity, or completeness of any information products and/or consumer reports, that will meet Client's needs, or that will be provided on an uninterrupted basis, and FSSolutions expressly disclaims all such representations and warranties. FSSolutions will not be liable to Client for any indirect, incidental, consequential, or special damages or for loss of profits, whether incurred as a result of negligence or otherwise, even if FSSolutions has been advised of the possibility of such damages.

Notwithstanding the aforementioned, FSSolutions agrees to be responsible for actual damages to the extent of and maximum stated herein for third party claims directly resulting from FSSolutions' sole negligence in assembling the consumer report. FSSolutions' maximum aggregate liability for damages to Client in connection with consumer reports shall not exceed an amount equal to the price paid by Client to FSSolutions for the consumer report at issue.

2.11 Force Majeure

Neither party shall be liable to the other for any delay or failure to perform due to a Force Majeure Event. Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay. Force Majeure Event means an event outside of a party's reasonable control including without limitation, restrictions of law, regulations, order or other governmental directives, labor disputes, acts of God, fire, explosions, terrorist acts, pandemics, fiber optic cable cuts, storm, subcontractors' performance or other similar event.

2.12 Insurance

Per RFP 2000002053 Special Provisions, paragraph 19, Insurance.

2.13 No Third Party Beneficiaries

There are no intended third party beneficiaries under this Agreement. Further, nothing in this Agreement shall entitle any person other than the undersigned parties to any claim, cause of action, remedy or right of any kind.

2.14 Publicity

Per RFP 2000002053, Special Provisions, paragraph 28, Safeguards of Information.

2.15 Governing Law, Venue, and Jurisdiction

Per RFP 2000002053, General Conditions and Instructions to Bidders, paragraph 78, Venue.

2.16 Sections and Other Headings

The section headings contained in this Agreement are for reference purposes only and shall not, in any way, affect the meaning or intent of the language.

2.17 No Assignment

Subject to RFP 2000002053, Special Provisions, paragraph 31, Use of Contract by Other Public Bodies, per RFP 2000002053, General Conditions and Instructions to Bidders, paragraph 35, Subletting of Contract or Assignment of Contract Funds.

2.18 Notice

Any notices permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or mailed by certified mail, first-class postage prepaid, to the other party at the address set forth below or to such other persons and address as either party may designate in writing.

If to Client: Yong Kim, CPPB
Contract Specialist II
12000 Government Center Parkway, Suite 427
Fairfax, VA 22035-0013

With a Copy to: Wallace R. Simmons, Jr., CSM
Loss Prevention Manager
12000 Government Center Parkway, Suite 215
Fairfax, VA 22035-0013

To FSSolutions: Stacy Williams, CPA
Executive Vice President & Chief Financial Officer
100 Highpoint Drive, Suite 102
Chalfont, PA 18914



2.19 Severability

The provisions of this Agreement are severable and if any one or more provisions may be determined to be unenforceable or invalid by a court of competent jurisdiction, in whole or in part, the remaining provisions shall nevertheless be binding, enforceable and in full force and effect.

2.20 Entire Agreement; Order of Precedence

The following documents are hereby incorporated herein in their entirety and in the event of conflict shall take precedence in the following stated order: (1) Master Agreement and (2) this Agreement.

2.21 Interpretation

This Agreement shall be construed fairly as to all parties and not in favor of or against any party regardless of which party was responsible for the preparation of this Agreement.

2.22 Subcontracting

Per RFP 2000002053, Special Provisions, paragraph 30, Subcontracting.

2.23 Authorization for Agreement

The execution and performance of this Agreement by FSSolutions and Client have been duly authorized by all necessary laws, resolutions or corporate action and this Agreement constitutes the valid and enforceable obligations of FSSolutions and Client in accordance with its terms.

In Witness Whereof, the parties, intending to be legally bound, hereto have caused this Agreement to be executed as of the Effective Date first set forth above:

FOR CLIENT:

Signature: _____

Printed Name: _____

Company: _____

Title: _____

Date: _____

Steve Pierson, CPPB
Contracts Manager

4/30/2018

FOR FSSOLUTIONS:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Stacy Williams

EVP & CFO

04/25/2018

Digitally signed by Stacy Williams
DN: cn=Stacy Williams, o=FirstLab,
ou=Finance Dept.,
email=swilliams@firstlab.com, c=US
Date: 2018.04.25 15:11:48 -04'00'